

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.508 OF 2001**

Venkatesh @ Kola Kottya Makkena,
Age 22 years, residing at
Dombivili West, District Thane,
at present in Yerwada Central
Prison, Pune. Appellant

- Versus -

State of Maharashtra
at the instance of Thane Nagar
Police Station, Dist: Thane. Respondent

Smt. Sonia Miskin, Advocate, appointed
for the Appellant/original Accused.

Smt. V.R. Bhonsale, Addl. Public Prosecutor,
for the Respondent-State.

CORAM: N.V. DABHOLKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: JANUARY 10, 2006

ORAL JUDGMENT (Per Smt.V.K.Tahilramani, J.):

1. Through this appeal the appellant i.e. the original accused has challenged the Judgment and Order dated 25-11-1999 passed by the 2nd Addl. Sessions Judge, Thane in Sessions Case No.149 of 1998. By the impugned Judgment the learned Sessions Judge convicted the accused under Section 302 of the Indian Penal Code (IPC) and sentenced him to RI for life and to pay fine of Rs.1000/-, i.d. RI for three months.

2. The prosecution case, briefly stated, is as under:-

The accused was working as a compounder in the dispensary of Dr. K.K. Subhan (deceased). The said dispensary was at Thane. On 21-2-1997, at about 9:30 a.m., scuffle started between the accused and the deceased in the dispensary. At the relevant time PW-4 Milind Bhiku Khairmode and PW-5 Vijay Bapu Kamble, who are police constables, had been deputed for election bandobust duty at Thane. These two police constables i.e. PW-4 Khairmode and PW-5 Kamble were passing by the road when they were informed that a scuffle is going on in the dispensary. Both of them rushed to the dispensary. They saw that scuffle was going on between two persons in the dispensary. They saw that one person was completely soaked in blood and he had caught hold of the accused. The accused was having a knife in his hand and he threw the same. PW-4 PC Khairmode accosted the person who had given the blow and forced the accused to sit on a bench. Thereafter, PW-5 PC Kamble informed the police about the incident. Within a short time police came there and took the accused into their custody. The injured i.e. Dr. Subhan was taken to the hospital by a jeep. On being taken to the hospital Dr. Subhan was declared dead. PW-2 PSI Shivaji Ramchandra Shenolkar lodged complaint on behalf of the State. The said complaint was under Section 302 of IPC. Thereafter, post-mortem was conducted on the body of the deceased

doctor by PW-3 Dr. More. PW-3 Dr. More found the following injuries on the person of the deceased:

"Incised wound on right side of the neck oblique verticle at lower end of thyroid cartilage lateral to esterilo clevmastoie muscle measuring about 5 x 1.5 c.m. x 6 c.m. deep.

On dissection ruptured cartoid vessels noted."

In the opinion of the doctor, the cause of death was Haemorrhagic shock following the rupture of carotid vessels.

After completion of the investigation, charge-sheet came to be filed. In due course the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant/accused under Section 302 of the IPC. The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of denial and false implication. It is further the defence of the accused that two unknown persons came to the dispensary of Dr. Subhan and they caused injury to

Dr. Subhan and ran away. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant/accused as stated in para 1 hereinabove. Hence this appeal.

4. We have heard Smt. Sonia Miskin, learned Advocate appointed for the appellant/accused as well as Smt. V.R. Bhonsale, learned A.P.P. for the State. We have also perused the evidence as well as the Judgment and Order passed by the learned Sessions Judge. After carefully considering the matter, we are of the opinion that this appeal deserves to be dismissed.

5. The conviction of the accused is mainly based on the evidence of PW-4 PC Khairmode and PW-5 PC Kamble. On the relevant day both these police constables were deputed for election bandobust duty in the area where the incident took place. PW-5 PC Kamble has stated that at about 10 a.m. on 21-2-1997 while he and PW-4 PC Khairmode were proceeding on the road, some persons came running to them and informed them that a scuffle is going on and hence they should come immediately. Hence PW-4 PC Khairmode and PW-5 PC Kamble rushed to the place where the scuffle was going on. They entered the dispensary. PW-5 PC Kamble has stated that he saw that scuffle was going on between two persons in the

dispensary. He saw one person was completely soaked in blood and he had caught hold of the accused. The accused was having knife in his hand and he threw the said knife. PW-4 PC Khairmode forced the accused to sit on a bench. Thereafter the police were contacted. The evidence of PW-4 PC Khairmode is on similar lines as PW-5. He has also stated that he saw a scuffle going on between two persons inside the dispensary. He has stated that the doctor was in an injured condition. He accosted the person who had given the blow i.e. the present accused. We have carefully perused the evidence of both these witnesses. Nothing has been elicited in the cross-examination of both these witnesses so as to disbelieve their testimony, hence we have no hesitation in relying on the testimony of these two witnesses.

6. Immediately after the incident, PW-4 PC Khairmode sent PW-5 PC Kamble to make telephone call to the police station about the incident at the dispensary. PW-5 PC Kamble telephoned Thane Nagar Police Station. Exhibit-18 is the station diary entry about the telephone call made by PW-5 PC Kamble. The said station diary clearly shows that PW-5 PC Kamble had telephoned the police station and informed that a doctor is being assaulted. On the basis of this telephonic call, PW-2 PSI Shenolkar immediately rushed to the scene of the incident. PSI Shenolkar took custody of the accused as

well as the weapon. He saw that blood was spread on the articles all over the dispensary. The clothes of the injured person were stained all over with blood. Thereafter PSI Shenolkar lodged a complaint on behalf of the State. The station diary entry corroborates the evidence of PW-4 and PW-5 witnessing the incident.

7. PW-1 Mohmed Shaikh is the panch witness relating to the scene of offence as well as the arrest of the accused. In his presence the panchnama relating to the scene of offence (Exhibit-14) was drawn. The said panchnama shows that the dispensary consisted of three parts. The first part was the waiting room for the patients, the second part was the examination room or the doctor's room and the third part was the dispensing room from where the compounder dispensed the medicines. Blood was seen on almost all the articles as well as the walls of the inner room. A huge pool of blood was found in the inner room. From this it is clear that the main assault took place in the inner room of the dispensary. This falsifies the defence taken by the accused that two unknown persons came and stabbed the doctor when he was in the outer room. Besides this it is pertinent to note that the accused was the compounder of the deceased doctor. If at all two unknown persons had assaulted the doctor, the accused would have been the first person to call for help and also would have contacted the police

and informed them about the incident. However, the accused has not done so. It would have been natural conduct on the part of the accused, if he was the compounder of the deceased, to have called for help or to have shifted the doctor to the hospital or to have contacted the police but he has not done so. This conduct on the part of the accused goes against him.

8. PW-3 Dr. More has performed the post-mortem on the deceased. He noted the following injuries:

"Incised wound on right side of the neck oblique verticle at lower end of thyroid cartilage lateral to esterilo clevmastoie muscle measuring about 5 x 1.5 c.m. x 6 c.m. deep.

On dissection ruptured cartoid vessels noted."

The injury clearly shows that it is a homicidal death. Of course the defence has also not seriously disputed that it is a case of homicidal death, however it is the case of the accused that he was not the assailant but two unknown persons had assaulted the doctor and ran away. In view of the evidence of PW-4 and PW-5 and the other evidence on record, we are of the opinion that the

defence taken by the accused is a false one.

9. In the present case it is seen that the accused was caught red-handed by the police. He came to be accosted by the police on the spot. Thereafter, the arrest panchnama of the accused was drawn wherein it was found that his clothes were stained with blood. The clothes of the accused as well as that of the deceased were sent to the chemical analyser. The chemical analyser's report (Exhibit-26) shows that the clothes of the accused as well as the clothes of the deceased were stained with blood of "O" group. The blood of the accused was also sent to the chemical analyser. The chemical analyser's report (Exhibit-28) relating to the blood of the accused certifies his blood group as "B". Thus the finding of blood group "O" on the clothes of the accused is an additional factor which goes against the accused.

10. In the present case it is seen that there are two eye-witnesses to the incident i.e. PW-4 PC Khairmode and PW-5 PC Kamble. Smt. Sonia Miskin, the learned Advocate for the accused, has submitted that both these witnesses cannot be believed because there are discrepancies in the evidence of these two witnesses. She has submitted that it is the prosecution case that both these witnesses have reached the dispensary at the

same time, in such case, the evidence should be consistent; however, it is not so. Hence it is her submission that these witnesses cannot be believed. The discrepancies pointed out by Smt. Sonia Miskin are that PW-4 has stated that when they reached the dispensary, they saw a scuffle going on between two persons and also saw one knife lying on the ground whereas PW-5 has stated that they saw a scuffle was going on between two persons in the dispensary, the accused was holding knife in his hand and he threw the said knife down. The second discrepancy pointed out by Smt. Miskin is that PW-5 Kamble has stated that when they reached the dispensary, a crowd had gathered whereas PW-4 Khairmode has stated that no crowd had gathered near the dispensary. These are the only two discrepancies pointed out in the evidence of these two witnesses. We find that these two discrepancies do not go to the root of the prosecution case that these witnesses saw a scuffle going on between the doctor and the accused. These discrepancies being minor in nature, in our view, they do not affect the prosecution case in any manner. On going through the depositions of both these witnesses we find their evidence to be cogent, reliable and trustworthy and we have no hesitation in relying on the same. In our view, the prosecution has adduced sufficient evidence to show that it was the accused who had assaulted Dr. Subhan and caused his death.

11. Advocate Smt. Sonia Miskin was appointed as amicus curiae for prosecuting the appeal on behalf of the appellant. We found her to be very well prepared and she has very ably conducted this appeal. We quantify her professional charges at Rs.2500/-.

12. In the result, we confirm the conviction and the sentence imposed upon the appellant/accused for the offence under Section 302 of IPC and dismiss the appeal. The appellant is in jail and he shall serve out his sentence.

The Registrar (Judicial) shall ensure supply of certified copy of this Judgment, free of cost, to the appellant in prison through the prison authorities.

(Smt. V.K.Tahilramani, J.)

(N.V.Dabholkar, J.)